STATE OF VERMONT

HUMAN SERVICES BOARD

| | | |
|---|---|---|
| In re | ) | Fair Hearing No. 20,434 |
| | ) | |
| Appeal of | ) | |

## INTRODUCTION

The petitioner appeals the decision by the Department for Children and Families, Health Access Eligibility Unit, denying his request for Medicaid coverage retroactive to March 2004. The issues are whether the Department is required under the regulations to consider retroactive requests for Medicaid coverage or whether the Board has jurisdiction to consider an appeal of a decision made by the Department in 2004 that the petitioner was ineligible for Medicaid at that time due to excess resources. The following facts are not in dispute, and are taken directly from the petitioner's memorandum, dated July 31, 2008.

## FINDINGS OF FACT

1. The petitioner filed an application for health care benefits from the state of Vermont in June 2004.

2. The petitioner was granted VHAP in a notice dated August 2, 2004. He was told a decision on whether or not he was disabled for Medicaid eligibility purposes was pending.

3. The Disability Determination Service found on September 2, 2004 that the petitioner met the disability test for Medicaid effective with the date of his application on June 23, 2004.

4. The petitioner was granted Medicare coverage because of his "kidney condition" (end stage renal disease) effective September 2004 in a notice dated September 17, 2004.

5. The petitioner was informed in a notice dated October 14, 2004 that he was ineligible for Medicaid due to excess resources. The notice stated that he was $2105 over the applicable resource limit of $2000 and stated "If the excess is used for certain things like medical expenses, you may be eligible."

6. The petitioner's VHAP benefits were terminated in January 2005 effective February 1, 2005 due to his receipt of Medicare.

7. The petitioner's Medicare Part B coverage was terminated in January 2005 effective February 2005 due to a lack of payment for the Part B premiums.

8. The petitioner reapplied for health insurance benefits May 1, 2005.

9. The petitioner was found eligible for the Healthy Vermonters Program and for VHAP-Pharmacy in a notice dated May 23, 2005. He was found ineligible for VHAP in the same notice.

10. The petitioner was granted Qualified Medicare Beneficiary (QMB) coverage effective February 1, 2006.

11. The Department subsequently agreed to change the eligibility date for QMB benefits to January 1, 2006, the effective date of MM 200.41 which eliminated the resource test for QMB benefits for all QMB beneficiaries in Vermont.

12. The petitioner has requested that Medicaid coverage be granted effective June 2004 based on his 2004 health care applications and the regulations providing for a resource spend down, but the Department has stated that he is not able to spend down his resources for a retroactive coverage period.

## ORDER

The Department's decision is affirmed.

REASONS

The petitioner admits that the Department's notice of October 14, 2004 informed him that he had been found "ineligible" for Medicaid based on excess resources of $2,105. As partly noted above, the notice (a copy of which accompanied the petitioner's memorandum) also stated: "If the excess is used for certain things like medical expenses, you may be eligible. Please contact this office if you need more information." The notice also contained other prominent advisories about contacting the Department for more information and about the petitioner's appeal rights. The petitioner, both before and subsequent to receiving the notice, was found eligible for other programs, which may have confused him, but there is no claim or indication either that he appealed the October 2004 Medicaid decision or that the Department did anything to discourage him from doing so.

Nonetheless, the petitioner argues that after an individual receives such a decision there is no "time limit" for spending down the excess resources, and that an individual's application date (in this case, June 2004) is protected *indefinitely* for retroactive Medicaid coverage until such time that the individual informs the Department that he has spent down the resources in question. It is

concluded, however, that this argument is contrary to a reasonable reading of the pertinent regulations and to the notices the petitioner received in this matter.

Although there are provisions in the Medicaid regulations allowing for up to three months retroactive coverage if excess resources are spent down in certain ways (see W.A.M. § 411.1), these clearly apply to applications that are either pending or under timely appeal. The petitioner may be technically correct that the regulations do not explicitly place a time limit on spending down excess resources, but rationality dictates that these provisions no longer apply once an individual has been found *ineligible* for Medicaid and has exhausted any appeals of that decision. Under the regulations, an individual is free to reapply for Medicaid, including for up to three months of retroactive coverage from the date of that new application, if and when he has spent down excess resources. The individual is also free to appeal any adverse determination of eligibility, and have his application reconsidered if he spends down his excess resources while his appeal is pending. However, nothing in the regulations allows for or requires unlimited and open-ended retroactive "reconsiderations" of *final* eligibility decisions in such circumstances.

To the extent that the petitioner's request for fair hearing in this matter can be considered an *appeal* of the Department's October 2004 eligibility decision, it is clearly untimely. Fair Hearing Rule No. 1000.2 (formerly Rule No. 1). For the above reasons, the Department's decision in this matter must be affirmed. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 1000.4D (formerly No. 17).

# # #